IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE NINETEENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO : 10134 of 2004

Between:

V. Pradeep Kumar, S/o. Sesha Reddy,
R/o. H.No. 1-9-183, ECIL Post, Kushaiguda, Hyderabad-62.

..... PETITIONER

AND

1 A.P. State Road Transport Corporation, Rep. by its Managing Director, Musheerabad, Hyderabad-20
2 The Executive Director (Medical), A.P.S.R.T.C., Musheerabad, Hyderabad-20.
3 The Superintendent and Chief Medical Officer, A.P.S.R.T.C., Tarnaka Hospital,Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to call for the records from the 1st and 2nd respondents and issue an appropriate Writ, Order or Direction, particularly one in the nature of Writ of Mandamus, declaring that the action of respondents in not regularizing services of Petitioner as Physiotherapist and issuing Notification and calling for applications to replace the petitioner by conducting interviews on 23-6-2004 as illegal, unjust, contrary to law, arbitrary, in violation of principles of natural justice, an act of victimization and unfair labour practice and violative of Artilces 14, 16 and 21 of the Constitution of India; and grant all consequential benefits;

Counsel for the Petitioner: MR.A.K.JAYAPRAKASH RAO

Counsel for the Respondents: MR.K.HARINATH

The Court made the following :

ORDER:

The petitioner filed this writ petition on 21-06-2004 to declare the action of the respondents in not regularizing his services as Physiotherapist and issuing a notification replacing the petitioner by conducting interview on 23-6-2004 as illegal and arbitrary.

It is stated that the petitioner is working as Physiotherapist on contract basis pursuant to his selection by the Selection Committee by their Order dated 4-10-2002 and working on consolidated pay of Rs.4000/-per month. The post of Physiotherapist is fallen vacant consequent on retirement of Koteshwar Rao. Instead of filling of the said post, the petitioner was appointed initially for the period of 6 months on consolidated pay of Rs.4,000/- per month. It is stated that instead of filling of said regular vacancy, the respondents made an advertisement for recruitment of paramedical staff on contract basis on contract basis and the same was published in news papers. As per the said publication, the APSRTC invited applications from the eligible candidates for the one post of Physiotherapist on the contact basis for a period of 3 years on a monthly consolidated remuneration of Rs.4, 500/-. It is stated that pursuant to the notification dated 14-8-2003 it was published in news papers on 2-9-2003 inviting applications for appointment of a physiotherapist on a contract basis and the petitioner has applied along with 32 other candidates who were found eligible for written examination. Out of 33 candidates, 19 candidates have attended for the written examination and the petitioner also appeared for the written examination which was conducted on 18-01-2004 along with other 18 candidates. Petitioner has secured 20 marks out of 50 marks. Whereas Kumari R.Sabita secured 27 marks, Kumari P.Shanti secured 25 marks and Sri Siva Saradhi secured 25 marks. Since three candidates got more marks than the petitioner, they were called for interview on 23-06-2004. It is stated that the petitioner having appeared for the

written examination on 18-01-2004 and on coming to know about his securing less marks than 3 other candidates, he questioned the said notification. It is stated that out of the said three candidates, by conducting interview, the selection committee selected Kum.P.Shanthi,, for the post of Physiotherapist on 23-06--2004. But pursuant to the status quo orders of this court the results were not declared and the selected candidates awaiting for the results.

The learned counsel appearing for the petitioner placed reliance on the judgment of Supreme Court in the case of State of Haryana Vs.Piara Singh, wherein the Apex Court held that:

> *"The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an adhoc or temporary appointment to be made . In such a situation, effort should always be to replace such an adhoc/temporary employees by a regularly selected employee as early as possible. Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an adhoc/temporary employee.*
>
> *Secondly, an adhoc or temporary employee should not be replaced by another adhoc or temporary employee; he must be replaced only be a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority."*

There is no dispute that the post of Physiotherapist is a sanctioned post fallen vacant on the retirement of one Koteshwar Rao, Physiotherapist. Instead of regularizing the petitioner on the contract basis for a period of 3 years, it is the duty of the respondents to replace the petitioner and to take steps for filling of that post by way of regular selection in the interest of corporation. If the respondents are permitted to fill up the said post, the same fate which the petitioner is facing may cause to the other selected candidates on the contract basis. Therefore, it is always better to avoid the arbitrary action on the part of the appointing authority. The respondents are bound to take steps to fill up the said post on permanent basis by way of regular appointment.

Having regard to the aforesaid facts and circumstances of the case, I am not inclined

to permit the petitioner to continue him on the contract basis as steps have been taken already for the replacement of the petitioner by another candidate by way of selection on contract basis. However, the respondents are directed to issue notification calling for the applications for filling of the said post by way of regular selection, for which the petitioner and other candidates who have appeared pursuant to the said notification dated 14-08-2003 are also entitled to apply along with others.

Therefore, the respondents are directed to issue notification within six months from the date of receipt of this order for filling up the post of Physiotherapist by way of regular selection.

The Writ petition is accordingly disposed of. The respondents may declare the results, if any, appointment made in favour of any selected candidates which will not be for a period of 3 years but will subject to issuance of notification for filling of regular vacancies. No costs.

Sd/- P.V.RADHA KRISHNA RAO

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Managing Director,A.P. State Road Transport Corporation, Musheerabad, Hyderabad-20
2 The Executive Director (Medical), A.P.S.R.T.C., Musheerabad, Hyderabad-20.
3 the Superintendent and Chief Medical Officer, A.P.S.R.T.C., Tarnaka Hospital, Hyderabad.

5.2CD copies

P.M.

Dated: 19-8-2004

Order

W.P.NO. 10134 of 2004

Disposing the Writ Petition

Without costs.

THE HON'BLE MR JUSTICE V.ESWARAIAH

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WRIT PETITION NO : 10134 of 2004

19th August,2004.